IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8872 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYDADA KHETARPAL ICE FACTORY

Versus

PORT OFFICER

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR PR NANAVATI for Respondent No. 1

MR RD DAVE for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/10/2000

ORAL JUDGEMENT

Rule. Mr PR Nanavati for respondent No. 1 and Mr RD Dave, for respondent No. 2 waive service of Rule. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. Vinayak Ice Industries was granted lease of plot bearing No.A-28 at Veraval port by the Port Officer, Gujarat Maritime Board for the period from 8.9.1992 to 7.9.1997. The party paid rent only till 7.9.1996 and thereafter remained in arrears of rent.That party had taken loan from the GSFC. Since that party did not repay the loan of the GSFC, the GSFC exercised its powers under section 29 of the State Financial Corporation Act, 1951 and put the plot to auction. The petitioner herein offered the highest bid at the auction sale conducted by the GSFC and accordingly the GSFC informed the Port Officer, Veraval to transfer the property in favour of petitioner. The Port Officer, however, addressed a letter dated 20.12.1999 (at annexure "G" to the petition) stipulating following conditions before the request for transfer could be accepted:

(a) Arrears of rent to the tune of Rs.81,721/- were outstanding from the previous party (Vinak Ice Industries) for the plot in question from 8.9.96 to 7.9.2000, the amount be paid with interest at the rate of 12% p.a.

(b) As per the prevailing schedule of port charges the transfer fee of Rs.1,06,500/-(500% of the actual rent) was also required to be paid.

(c) NOC from GSFC was required.

In this petition the petitioner has challenged the first two stipulations in the letter of the Port Officer, Veraval.

3. As far as the first demand is concerned, it is contended that in view of the principle laid down by the Apex Court in Isha Marbles vs Bihar State Electricity Board in 1995(2) GLH 134 the auction purchaser at a public auction held by the GSFC is not required to pay the dues of the previous owner. There was no condition in the advertisement requiring the auction purchaser to pay the dues of the previous owner.

Secondly, it is submitted that the petitioner is not liable to pay the transfer fee because the petitioner is not getting the transfer from the previous owner, but it is a statutory transfer by the GSFC under section 29 of the Act.

4. In response to the notice issued by this Court affidavit in reply is filed by the Assistant Assistant Port Officer of the Gujarat Maritime Board at Veraval

making following submissions:

(i) The petitioner has already filed Regular Civil Suit No.485/2000 before Civil Judge (SD) Veraval and in that suit he has also prayed for interim injunction. However, the petitioner did not get interim injunction as prayed for and same is pending for final decision and therefore the petitioner has preferred the present petition on the subject matter. Hence, the present petition is not maintainable.

(ii) Secondly, it is submitted that since Vinayak Ice Industries did not pay arrears of rent from 8.9.96 to 7.9.2000 the petitioner is liable to pay the said arrears of rent amounting to Rs.83,519/- with interest at the rate of 12% p.a. It further appears that the Gujarat Maritime Board has certain differences of opinion with the GSFC as the GSFC has declined to pay the arrears of rent of Vinayak Ice Industries to the Port Officer, Veraval on the ground that the amount realised at the auction is much less than the outstanding rent amount which was recoverable by the GSFC from Vinayak Ice Industries.

(iii) As regards transfer fee, it is submitted that the transfer fees are being levied as per notification dated 12.5.1998 under Gujarat Maritime Board Act, 1981(at annexure "X" to the affidavit) being schedule of charges (fee) for granting permission to the lease holder of the land for transferring the name in case of transfer.

5. In rejoinder it is submitted by the learned counsel for the petitioner that the Civil Suit pending in the Civil Court at Veraval is not for identical reliefs.

6. Having heard the learned counsel for the parties, it appears to this Court that there is some substance in the grievance made on behalf of the petitioner that in view of the principle laid down by the Apex Court in Isha Marbles (supra) the petitioner can not be made liable to pay arrears of rent which were due from the Vinayak Ice Industries, the previous owner. No collusion between the previous owner and the petitioner is alleged. There is nothing on record to show that in the public advertisement or subsequent agreement the auction purchaser was required to clear the dues of the previous owner. It is only by the impugned demand notice dated 20.12.1999 that the Port Officer has required the petitioner to pay the rent due from the previous owner. Rationale of the aforesaid principle is that if the liabilities of the previous owner sought to be fastened on the auction purchaser were made known to the intending

purchaser, the intending purchaser would have offered the amount to the GSFC taking into the other liabilities of the previous owner. In that view of the matter, the first stipulation in the impugned letter dated 20.12.1999 is liable to be declared as illegal.

7. As far as transfer fees are concerned, it is contended on behalf of the Port Officer, Veraval that the transfer fees are being levied and recovered in accordance with the statutory notification, dated 12.5.98 under the Gujarat Maritime Board Act, 1981.

However, learned counsel for the petitioner has submitted that the petitioner is prepared to deposit the amount of transfer fee under protest, and upon deposit of the transfer fee under protest, the Port Officer should transfer the plot in favour of the petitioner, as the petitioner wants to make representation to the respondents after paying the amount of transfer fee under protest. Reference is made to the letter dated 19.6.2000 (Annexure "K") from the Port Officer, Veraval to the CEO and VC of the Gujarat Maritime Board seeking instructions on the question of transfer fee.

8. Subject to clarification that the petitioner shall not press for any relief before the Civil Court at Veraval which is covered by this order, this petition is partly allowed. The demand made by the Port Officer, Veraval for the arrears of rent by the previous owner (Vinayak Ice Industries) for the period from 8.9.1996 to 7.9.2000 is hereby declared as illegal and respondent No.1 shall not make any such demand and petitioner's application for transfer of plot in question in favour of petitioner shall be considered by the Port Officer, Veraval after the petitioner deposits the amount of transfer fee as mentioned in the letter dated 20.12.1999 (Annexure "G"). The NOC issued by the GSFC is already produced by the petitioner at annexure "D" to the petition. As far as transfer fee is concerned, after the deposit is made under protest, the petitioner will be at liberty to make a representation to the Chief Officer and Vice Chairman of the Gujarat Maritime Board who shall decide the said representation in accordance with law. The deposit of transfer fee under protest shall abide by the said decision which will be taken by the Chief Executive and Vice Chairman of the Gujarat Maritime Board as expeditiously as possible.

9. The petition is accordingly disposed of in terms of the aforesaid directions.

Rule is made partly absolute to the aforesaid extent only with no order as to costs.

11.10.2000 (M.S.SHAH,J)